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LEGAL SYSTEM OF SCANDINAVIAN COUNTRIES

Abstract. The article presents a General description of the legal systems of the Scandinavian countries. The authors come to the conclusion that the common historical roots, the closest political, economic and cultural ties predetermined the existence of similar features in the legal systems of these States. At the same time, the Scandinavian legal systems have features typical of the Anglo-Saxon and Romano-German legal families. Legal systems in Scandinavian countries are divided into two groups. The first includes Denmark, Norway and Iceland, the right of which historically evolved on the basis of almost identical in their content compilations Danish and Norwegian law, implemented in the second half of the XVII century the second group includes Sweden and Finland. The analysis of modern legal systems of Scandinavian countries shows some commonality of Scandinavian and Romano-German law. First of all, it is manifested in the similarity of sources of legal regulation. In the Scandinavian countries, the law is the main source of law, and the courts formally cannot, by resolving a particular dispute, create legal norms. This is the most significant difference between the Nordic and common law.

Keywords: legal system, legal family, legislation, codification, judicial decision, judicial precedent, administrative precedent, conflicts, reforms, systematization.

For a number of reasons (colonial expansion, reception, ideological influence, and others) beyond the limits of Europe there are a number of national legal systems which, subject to certain reservations, may be relegated to the Romano-Germanic family. In this connection we consider Latin American law, the legal system of Japan, and also, although not directly within the Romano-Germanic family but close to it, Scandinavian law.

Despite the fact that the countries of Northern Europe - Sweden, Norway, Denmark, Iceland, and Finland - are geographically closer to the countries of the Romano-Germanic legal family than Latin America or Japan, nonetheless when relegating their law to a particular family significantly greater complexities arise and certain European writers deny they are affiliated to this family, asserting the originality and autonomy of Scandinavian law.

Determining the place of Scandinavian law within the principal legal families has been the subject of a long and lively discussion in the literature of comparative law. The majority of legal scholars consider Scandinavian law to be a species, albeit a special species, of the Romano-Germanic legal family or an individual sphere of the continental system of law. The fact is that the law of the countries of northern Europe widely uses the legal constructions and concepts of the Romano- Germanic legal family.

Scandinavian law adheres to the supremacy oflex. A norm of law in Scandinavian countries has a more abstract character than a norm of Anglo-American law. These peculiarities of the legal systems of Scandinavian countries also are used as decisive arguments in favor of relegating the law of the countries of northern Europe to the Romano-Germanic family.

Many comparativists insist upon ("intermediate" status of Scandinavian Law). Famous jurist Saidov A.Kh. places it between the Romano-Germanic legal family and the Common law [1]. Another legal scholar, Gubaidullin A.R., shares that position, referring to the fact that European continental law is more dogmatic in comparison with the legal systems of the Scandinavian countries, whereas Anglo-American law is more pragmatic [2, p. 21]. Yet other jurists, such as Denisenko V.V., Trikoz E.N., relegated the law

of the countries of northern Europe to a "third system" of Western Law. Just using notes that Nordic Law is closer to the Common law than to the Romano-Germanic legal family [3, p. 29]. Finally, certain legal scholars, for example, Verkhoturov D.A.,Verkhoturov A.A., consider disputes with regard to the classification of Scandinavian law to be utterly useless [4, p. 82].

Indeed, there are certain circumstances encouraging this type of conclusion. Roman law played an undoubted lesser role in the development of legal systems in the Scandinavian countries than in France and Germany. There are and were no codes in the northern States similar to the Code Civil in France or German civil code. Judicial practice plays a more significant role than in the countries of continental Europe.

Scandinavian law also cannot be relegated to the Anglo-American system of Common law. The historical development of legal systems of the northern countries proceeded wholly independently of English law. Scandinavian law has virtually no characteristic indicia of the Common law, as a rule, precedent, the technique of drawing distinctions, and the special role of procedural law.

At the same time, one cannot completely exclude nor underestimate the impact on Scandinavian law of the Common law and Romano-Germanic legal families. The impact was various during the course of history and manifested itself diversely with regard to branches of law, especially the civil law.

The forming of law in the Scandinavian countries followed an original path to a significant degree independent of the factors which operated in continental Europe. A relatively underdeveloped administrative hierarchy, the existence of free peasants, democratic forms of taking into account the interests of various strata of the population within the framework of a church congregation, which led to compromise means of settling social conflicts, and the constant adaptation of economic development to the conditions of a patriarchal society were characteristic of the historical development of the northern countries. Consequently, a centralized State arose early in the Scandinavian countries and a law unified on the scale of the country.

Commencing in the thirteenth century a consolidation of legislation was carried out in Sweden. During the mid-fourteenth century two laws were issued, one of which regulated relations with rural localities and the other in cities. These acts operated in Sweden for some 400 years. They were repeatedly changed and added to. The courts played an important role in the process of adapting those laws to new social conditions.

In the seventeenth century Swedish judicial practice accepted many constructions and principles of Roman law that had been received in European countries, as a consequence of which these Roman elements became an integral part of Swedish law and Swedish legal culture.

However, it should not be forgotten that the reception of Roman law affected the Scandinavian countries insignificantly. The principal consequence thereof was to establish closer links with the legal science of continental Europe than with England [5, p. 276].

The close linkages of the northern legal systems are to be explained by the fact that there always had been stable political, economic, and cultural ties historically between the Scandinavian countries. To be sure, a complete union of the three kingdoms - Denmark, Norway, and Sweden - had been merely temporary. It was formed through the Kalmar Union and existed from 1397 to 1523. But ties between Sweden and Finland and between Denmark, Norway, and Iceland proved to be much more stable and were retained for centuries.

During the twelfth and thirteenth centuries, Finland was conquered by Sweden and became part of the Swedish Empire until 1809, when Sweden, as a result of an unsuccessful war against Russia, was obliged to cede Finland to Russia. The Russian State granted significant autonomy to Finland as an autonomous Grand Princedom, and the Tsarist administration interfered little in its legal system. When Finland separated from Russia after the 1917 October Revolution and proclaimed its independence in 1918, its legal unity with Sweden was not materially weakened.

Denmark, Norway, and Iceland were under the centralized administration of the Danish royal family for more than four centuries, from the end of the fourteenth century, so that Danish law in essence operated also in Norway and Iceland. Denmark in 1814 ceded the territory of Norway to Sweden, but the Norwegians were able to achieve significant autonomy within the Swedish Empire and achieve full autonomy in 1906. Finally, in 1918 Iceland was proclaimed to be an independent State, although it remained under the authority of the Danish monarch until the end of the Second World War.

Old German law served as the general historical foundation of Scandinavian law. But in each northern country it developed, of course, its own local peculiarities. Beginning from the twelfth century the norms of Old German law were incorporated into numerous land and, later, city laws. The process of the combining and unification of law had commenced from the early acts of central power. During the fourteenth century in Sweden they had succeeded in combining the law of individual localities into a single land law, and the law of peoples into a single city law.

During the seventeenth and eighteenth centuries, the point of departure for forming the legal systems of the Scandinavian countries became two legislative acts, two digests: the first was the code of King Christian V (Danske Lov) adopted in Denmark in 1683 (its operation was extended in 1687 to Norway under the name (Norske Lov) and the second, the 1734 digest of laws of the Swedish State (Sverigesrikes lag).

The Danish Code consisted of the following sections:

1. on court procedure;
2. on the church;
3. on secular estates, trade and family law;
4. on maritime law;
5. on the law of things and inheritance;
6. on criminal law.

There were nine sections in the 1734 Swedish code:

1. on marriage;
2. on parents and children;
3. on inheritance;
4. on immoveable;
5. on construction;
6. on trade;
7. on crimes (criminal code);
8. on execution ofjudicial decisions;
9. on court procedure and organization.

The digest consisted of 1300 paragraphs. Just as the Danish code, it was written in simple, clear vernacular language. In the interests of fuller specific regulation it rejected theoretical generalizations and the creation of concepts in that form in which they were introduced on the European continent in the eighteenth century by proponents of natural law.

It should be noted that the influence of Roman law on the 1734 Swedish code was insignificant. The authors of the code turned to the traditions of the old Swedish land and city law. This is evident in its structure, style, and language, and in the absence of generalizing norms.

These two digests also comprised the basis of the subsequent development of both branches of Scandinavian law - Danish and Swedish. The development occurred, of course, not in isolation from continental Europe. Rather they should be characterized as digests of legislation in force inasmuch as individual parts of these legislative acts are in no way linked between themselves. Moreover, they should not be deemed to be codes since they included merely an insignificant part of legislative provisions in force. Whereas the 1734 Swedish law performed a practical role, being an integrating factor of positive Swedish law, the Code of Christian V was transformed into a "museum exhibit", although formally it continues to operate.

The Swedish law of 1734, in force to this day, includes virtually no provisions adopted at the time. A number of sections were fully reworked: in 1920 a new section on marriage was adopted; in 1948, on court examination; in 1959 as a result of reworking the old section on inheritance, a section was included in the text under that name, the section on parents having been separated out in 1949; and in 1970 the section on immovable was completely revised. In the other sections there remained an insignificant number of early norms. The majority of the previous provisions were replaced by individual laws whose norms comprise the core of legal regulation of relations in the respective spheres [6, P.68].

At present legislation, no longer based on the system of 1734, has encompassed many branches of Swedish law: labor and joint- stock society law, legislation on the protection of industrial ownership and social security, environmental protection, and many sections of administrative law - in other words, primarily all those domains of legal regulation which have emerged as required by the socio-economic development of the country beginning from the mid-nineteenth century. Although the number of legislative prescriptions goes beyond the bounds of the 1734 code and significantly succeeded the systematized portion of Swedish legislation in accordance with that act, the practical importance of the 1734 law is still considerable.

This cannot be said of the Danish code, which remains basically an historical monument. Codified legislation does not represent a large part of Danish law in force. There, as in Norway, importance is attached to judicial practice as a source of law. The role of judicial practice is significant also in Sweden,

and this distinguishes Scandinavian law from the Romano-Germanic legal family, bringing it closer to some extent to the Common law.

The operation for many centuries of the 1734 Swedish code and the Danish-Norwegian code of 1683-1687 clearly shows that over the years a law is applied less and less and gradually ceases in general to function under the burden of precedential practice developing on the basis thereof. This law of societal development of legal development also applies to the 1804 FrenchCode Civil and the German civil code.

The historical and cultural community of the Scandinavian countries, the development of mutual trade and improvement of transport links, and the similarity of the Scandinavian languages led to close cooperation in the legislative sphere.

Scandinavian law is a unified system not only by virtue of the similarity of their historical paths in the development of law and the peculiarities of legislation and sources of law. A special role is played here by the fact that the Scandinavian countries cooperate closely in the domain of legislation. This process, commencing at the end of the nineteenth century, led to the emergence of a significant number of unified acts equally in force in all the participant States [7, p. 17].

The legal cooperation of the northern countries commenced from 1872, when Scandinavian jurists assembled in conference for the purpose of facilitating the further unification of Scandinavian law. From that time it became a characteristic feature of law-creation in the domain of marriage and family, contract, and delict, company, and intellectual property law. However, in the public-law sphere, criminal law and procedure, taxation, right of ownership lo an immoveable; that is, domains where various national traditions have greater weight, such cooperation is weaker.

In 1880 a uniform law on negotiable documents entered into force simultaneously in three countries: Sweden, Denmark, and Norway. In subsequent year's principal attention was devoted to the unification of trade law (laws on trademarks, trade registers, firms, cheques) and maritime law.

At the end of the nineteenth century even more courageous unification plans emerged. In 1899 Professor Larsen, of Denmark, proposed the unification of all private law with a view ultimately to have a uniform Scandinavian civil code. Although the governments of the Scandinavian States in principle agreed with that proposal, the creation of a draft uniform civil code was deferred and preference given to the unification of individual institutions of the law of ownership and the law of obligations. The result of these two efforts was a draft law on the sale of moveable property. It entered into force in Sweden and Denmark in 1906; in Norway in 1907 and in Iceland in 1922.

Yet another important legal result of cooperation among the Scandinavian countries was the law on contracts and other legal operations in the law of ownership and obligations. It entered into force in Sweden, Denmark, and Norway between 1915-1918 and, in Finland, in 1929. On the basis of the aforesaid and certain other laws, a uniform law of contract was in essence formed in the Scandinavian countries.

The Scandinavian States actively collaborated in the domain of family law, although here the differences between the legislation of the countries of the region was more pronounced than in the law of obligations. It should be noted that many questions under which reforms were conducted in continental Europe only after the Second World War in Scandinavian law were resolved much earlier. Suffice it to recall the equality of husband and wife, rejection of the principle of fault as the principal grounds for dissolution of marriage, equalization of the rights of children born out of wedlock.

Especially favorable conditions existed in the Scandinavian countries to achieve, if not unity, then a high level of harmonization of law. Their historical development and languages were so similar and cultural links so close that serious political differences did not exist between them and their populations, geographic positions, and economic levels of development were virtually identical. All those circumstances, and also the fact that law in those countries had developed along parallel paths, significantly cased legal cooperation. At present Scandinavian experience is considered to the model for respective cooperation at the general European level.

Unification and harmonization of the law of those countries does not, however, mean that their national legislative acts are completely identical. Scandinavian law is not a system of positive law, but rather a legal conception. Scandinavian jurists suggest that the Uppsala School of law is the basis of such a conception. The progenitors of the so-called Scandinavian legal realism were Axel Hegerstrom and his followers.

The community of legal systems of the Scandinavian countries is illustrated by using as an example a book introducing Danish law to foreign jurists [7, p. 18]. That book consists of five parts. The first part is devoted to the legal system - history, sources, legal organizations, legal education, and the profession of jurist. Part two treats branches and institutions of private law, including family, obligations, commercial, air, private international law, ownership, insurance, and juridical persons. The third part is devoted to public law, including constitutional, administrative, criminal-judicial, tax (instruments of planning, and so on). Part four is given to labor law, and the last, part five, to legal philosophy.

At present a unifying influence on the legal systems of the Scandinavian countries is exerted by their membership in such European structures at the Council of Europe, European Union, OCSE, and the Organization for Economic Cooperation and Development. Thus, although the legal systems of the Scandinavian countries as a whole are close to the Romano-Germanic legal family, they have material specific features.

Often the legal systems of the Scandinavian countries are divided into two groups. The first includes Denmark, Norway, and Iceland, whose law historically has developed on the basis of virtually identical compilations of Danish and Norwegian law effectuated during the second half of the seventeenth century. Sweden and Finland are in the second group, where in 1734 the Law of the Swedish State was introduced. In accordance with the 1809 Friedrichsham Peace Treaty which ended die Russo-Swedish Warof 1808-1809, Sweden lost Finland. Nonetheless, the influence of Swedish law in that country has remained significant to this day.

The interpenetration of the legal systems of both groups is obvious. This is to be explained by the following reasons: extended mutual historical links and ethnic similarities of the States; virtually complete absence in all these countries of the reception of Roman law, which exerted a material influence on the development of the legal systems of the continental European countries; the absence of codes systematizing individual branches of law, as was done in the Romano-Germanic legal family; the process of unification of law under way in the countries of Scandinavia for more than a century.

An analysis of the modern Scandinavian legal systems shows a certain community of Scandinavian and Romano-Germanic law. It is manifest mostly in the similarity of the sources of legal regulation. In the Scandinavian countrieslex is the principal source of law. The courts may not, when resolving a specific dispute, create legal norms. On this question a more material distinction is discovered between the systems of Scandinavian and Common law.

It should be acknowledged at the same time that the role of the court in Scandinavian countries is traditionally rather significant. The functions of a judge have never come down to exclusively the application of norms of legislation. The judge in Scandinavian countries possesses great freedom in the interpretation of provisions contained in laws and contracts.

In Sweden the courts of lower instances in virtually all situations follow the decisions adopted by superior judicial agencies, above all decisions of the Supreme Court, deeming them to be an authoritative exposition of law in force.

The role of judicial practice in recent years has grown noticeably. According to a Swedish law of 1971, the Supreme Court considers those cases which are of interest from the standpoint of the establishment of certain orientations of law enforcement activity. Thus, the decisions of the Supreme Court are binding upon the entire judicial system. Ultimately, the growing practice of including indefinite norms in laws has led to an expansion of the discretionary powers of judges. In Sweden this has been called “general reservations”. Swedish jurists themselves assess the development of the legislation technique of “general reservations” as a “variety of the delegation of legislative power to judicial agencies”. This trend can be seen in the evolution of the system of sources in all countries of the Romano-Germanic family.

Scandinavian law uses general legal concepts of Romano-Germanic law. The system of training legal personnel is similar to the system of higher legal education adopted in continental Europe. All this is a result of the influence of Roman, and then of French and German Law.

During the early decades of the nineteenth century the French legal system exerted strong influence on the law of the countries of northern Europe. A draft civil code using the model of the Code Napoleon was prepared in Sweden in 1826, but it was not adopted.

At the end of the nineteenth and beginning of the twentieth centuries, the need to modernize law forced Scandinavian jurists to turn to the experience of Germany. Virtually all Swedish professors of law received their training in this period at German universities. However, the theoretical views of the Pandects were not accepted by Scandinavian jurists. The Scandinavian countries rejected the codification of civil law along the lines of the German civil code because the last contained a large number of abstract concepts alien to the traditional functional approach to law of Scandinavian jurists. Rather a sociological orientation came to predominate, and the theory of social functions developed principally by French jurists received support.

A number of distinctive features of Scandinavian law distinguish it from the Romano-Germanic family. First, Scandinavian law does not know the division of law into public and private, nor into branches. In this it is similar to the legal family of the Common law. Second, Scandinavian law is not codified. Formally in these countries laws continue to be in force which initially encompassed all normative material but for the aforesaid reasons cannot be identified with codifications as in the countries of the Romano-Germanic legal family [7, p. 19].

Certain elements of the legal systems of Scandinavian countries are closer to the Common law system than to the Romano-Germanic legal family. In particular, the legislator in Scandinavian countries avoided for a long time to use norms with a high level of generalization. Civil and criminal procedure is regulated there by the same rules.

Scandinavian and Common law are united in their pragmatic approach to law, legal concepts, and constructions. This last circumstance to a certain degree also explains the success which the American conceptions of legal realism enjoyed in Scandinavian countries during the Second World War. I lie growing influence of American law also was manifest in recent borrowings of individual legal constructions and concepts from American law, for example, in the sphere of delictual responsibility, insurance, and others. And the methods of teaching legal disciplines in the universities of Scandinavia remind one of the American system of legal education.

In Swedish law are most fully manifested the features peculiar to Scandinavian law as a whole: first, Sweden was the initiator of work to create unified legislativeacts; second, Sweden always was the first of the countries to itself introduce uniform legislative acts; third, the very content of such acts was based on Swedish legislation.

Thus, there exists a significant influence of Sweden on the formation of the sources of Scandinavian law. For example, the draft law of the sale of goods was prepared at the initiative of the Swedish government in order to replace analogous laws in Denmark, Norway, and Finland.

Lex is the principal source of law in Sweden. Despite the fact that Swedish legislation today is an aggregate of detailed norms, the majority of which are unsystematised, many jurists in Sweden insist upon the supremacy oflex in the law of Sweden. Thus lawyers divides the sources of law intolex and other normative acts, acts of interpretation of law, and acts of law enforcement. They defineslexas a written norm of law relating to a certain legal order.

The Swedish legislator never aspired to work out determined legal principles applicable to each branch of law. This has led to the number of norms of a general character being extremely insignificant. At present, a contradictory orientation in Swedish law-creation is to be noted: from special legal norms directed towards regulating a specific vital situation to so-called elastic norms. The idea comes down to endowing judicial and other State agencies with broad freedom of discretion to resolve legal problems encompassed by those prescriptions. The discretionary powers in such instances are virtually unlimited since the respective legal norms also refer to such categories as “reasonableness”, “justness”, “good faith business practice”, and others.

The preparatory materials acquire too much significance in connection with the unspecificity and ambiguity of the norms of the law itself, and legal scholars see in this an objective trend of the development of law as a whole.

Swedish legislation is basically uncodified. The sole official means of systematization is the successive numeration of the acts when they are officially published [7, p. 20].

The final results of the legislative process - laws and decrees - are published in the official bulletin of Swedish legislation founded in 1824. When citing the texts of laws, reference is made to the year and issue number of the bulletin.

Custom in Swedish law is an "unwritten norm of law" retaining its operation in social practice. The domain of the application of custom in Sweden is rather limited: because of the supremacy oflex, custom is relegated to a secondary role. This is connected with the fact that a large part of social relations are regulated by legislative means. However, in those domains such as trade and navigation, customs play a large role and in certain instances (few, to be sure) custom even has priority overlex. For example, in the law on sale and barter of moveable things it is specified that the norms of that law are subject to application unless otherwise provided by a contract or does not arise from a trade custom or usage.

Customs and usages operating in a determined Swedish city, port, or environs are summarized and published by local chambers of commerce, which significantly facilitates the possibility of their application.

Yet another source of law in Sweden is judicial practice. Judges in essence engage in norm-creation in the guise of an interpretation of a law. In Swedish legal doctrine the idea is clearly expressed that a decision of the highest judicial instances is nothing other than the decision of a specific case. Courts of first instance reluctantly change the practice which has formed of deciding determined cases. They in all instances practically are guided by decisions adopted by superior judicial instances in analogous cases.

Swedish courts of first instance fulfill various legal and administrative actions which in other countries are effectuated by other State institutions, for example: regulate transactions with regard to the sale and pledge of land plots, register wills and draw up the obligatory inventory of property of deceased persons, and effectuate supervision over trusteeship and the management of the property of a minor.

In Sweden six appellate courts exist (by territories), the court of last instance is the Supreme Court of Sweden. Special courts also operate, for example, the Supreme Administrative Court, and the court for labor conflicts.

The growing role of judicial practice observed in recent decades is without question linked with the inability of legislation to react flexibly and rapidly to the dynamics of social development. Moreover, by means of the extensive use of "general reservations" in laws the legislator intentionally provides the possibility to judicial agencies to effectuate law-creation activity.

Swedish jurists, however, allot to courts merely the role of interpreters of law and to a much lesser degree that of the creators of precedents. In Sweden there is no concept of precedent in the form in which it exists in English law. Nonetheless, in accordance with the 1971 reform the Supreme Court of Sweden was indirectly endowed with a law-creation function. The highest judicial instance was given the right to consider cases of interest on the plane of establishing specific orientations in law enforcement activity.

A legal norm created by judicial practice has no authority as a norm oflex. It is rather unstable, for at any moment it may be discarded or vacated in connection with the consideration of a new case. A norm created by judicial practice exists and is applied only to the extent that each judge considers it to be a good one.

In the conclusion we would like to note, that Swedish legal doctrine to a certain extent gravitates towards introducing the rules of precedent but all the same takes the view that the role of a court is to clarify legal norms adopted by legislative means, by way of interpretation. One of the dominant trends in the development of sources of law is the growing importance of normative legal acts, which at least correspond to the nature of law, the properties thereof, ensuring the purposeful dynamic development of the particular legal system and which are at the same time the most advisable and convenient in practice. The dynamics of Swedish sources of law testify to this. The Baltic States are all actively gravitating toward the sphere of influence of Scandinavian law. Integration processes are growing in the economic and political domains. Common inter-State structures are emerging. Legal assistance of Scandinavian countries is becoming more noticeable and finds its reflection in the national legislation of the Baltic States.

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СКАНДИНАВИЯЛЫҚ МЕМЛЕКЕТТЕРДІҢ ҚҰҚЫҚТЫҚ ЖҮЙЕСІНДЕГІ ЖАЛПЫ ЖӘНЕ ЕРЕКШЕ

Аннотация. Мақалада Скандинавия елдерінің құқықтық жүйелерінің жалпы сипаттамасы берілген. Авторлар ортақ тарихи тамырлары, тығыз саяси, экономикалық және мәдени байланыстар осы мемлекеттердің құқықтық жүйелеріндегі ұқсас белгілердің болуын алдын ала анықтады деген қорытындыға келеді. Сонымен қатар скандинавалық құқықтық жүйелер англосаксондық және романо-Герман құқықтық жануя-

ларға тән жалпы қасиеттерге ие. Скандинавиялық елдердегі құқықтық жүйелер екі топқа бөлінеді. Біріншісі XVII ғасырдың екінші жартысында жүзеге асырылған Дат және Норвег құқығының мазмұны жағынан бірдей компиляцияларының негізінде тарихи дамыған Данияны, Норвегияны және Исландияны қамтиды. Скандинавиялық елдердің қазіргі құқықтық жүйелерін талдау скандинавиялық және романо-Герман құқығының кейбір қауымдастығын көрсетеді. Ең алдымен, ол құқықтық реттеу көздерінің ұқсастығында көрінеді. Скандинавия елдерінде заң құқықтың негізгі көзі болып табылады, ал соттар нақты дауды шеше отырып, құқықтық нормаларды құра алмайды. Бұл мәселеде скандинавиялық және жалпы құқық жүйелері арасында айтарлықтай айырмашылық бар.

Түйін сөздер: құқықтық жүйе, құқықтық жануя, заңнама, кодификация, сот шешімі, сот прецеденті, әкімшілік прецедент, коллизиялар, реформалар, жүйелеу.

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ОБЩЕЕ И ОСОБЕННОЕ В ПРАВОВЫХ СИСТЕМАХ СКАНДИНАВСКИХ ГОСУДАРСТВ

Аннотация. В статье представлена общая характеристика правовых систем скандинавских стран. Авторы приходят к выводу, что общие исторические корни, теснейшие политические, экономические и культурные связи предопределили наличие схожих черт в правовых системах данных государств. В то же время скандинавские правовые системы имеют черты, характерные для англосаксонской и романо-германской правовых семей. Правовые системы в скандинавских странах принято делить на две группы. Первая включает Данию, Норвегию и Исландию, право которых исторически развивалось на основе почти идентичных по своему содержанию компиляций датского и норвежского права, осуществленных во второй половине XVII в. Во вторую группу входят Швеция и Финляндия. Анализ современных правовых систем скандинавских стран показывает некоторую общность скандинавского и романо-германского права. Прежде всего, она проявляется в сходстве источников правового регулирования. В скандинавских странах закон является основным источником права, а суды формально не могут, разрешая конкретный спор, создавать правовые нормы. В этом вопросе обнаруживается наиболее существенное различие между системами скандинавского и общего права.

Ключевые слова: правовая система, правовая семья, законодательство, кодификация, судебное решение, судебный прецедент, административный прецедент, коллизии, реформы, систематизация.

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